

AMENDMENT UNDER 37 C.F.R. § 1.116
U.S. APPLN. NO. 09/986,688

REMARKS

Applicant respectfully requests the Examiner to withdraw the rejection of claims 1-12 under 35 U.S.C. § 112, second paragraph, in view of the above corrective amendments to claims 1 and 2.

Claims 1, 5, 9 and 11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Armand, and claims 2, 6 and 10-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Armand.

In support of the rejection under 35 U.S.C. § 102(b), the Examiner (**incorrectly**) states:

Armand discloses a control lever (10) system for a parking brake, comprising: . . . a releasing knob (21) . . . disposed on a peripheral surface of a grip of the control lever . . .

In the rejection under 35 U.S.C. § 103(a), the Examiner (**correctly**) states that:

Armand does not disclose the releasing knob being disposed on a peripheral surface of a grip of the control lever . . .

Applicant does not understand these apparently **inconsistent** statements. However, it is clear that Armand's releasing means 21 is **not** on a "peripheral surface" of the control lever 10, but, rather, is on the free or head end of the control lever 10 (as is conventional in the prior art).

In an effort to advance the prosecution of the application, and in an attempt to respond to the Examiner's qualification of these two rejections ("as broadly claimed"), Applicant proposes the above amendments to claims 1 and 2 only in an effort to emphasize already recited clear distinctions between the subject matter of each of the independent claims 1 and 2 and Armand's disclosure. These amendments make it clear (if it were not clear before) that Applicant's claimed

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"releasing knob" is disposed only on a "peripheral surface of a grip portion of the control lever", and not on the head or free end of the control lever. Applicant uses the terms "head end" and "base end" because these terms are used in Applicant's specification to define the opposite ends of Applicant's control lever 10.

In a further attempt to eliminate any superficial readability of Applicant's claims on Armand's disclosure to respond to the Examiner's remark "as broadly claimed", Applicant has amended claims 1 and 2 to make it clear that "only one" lateral side of the recess has an open face.

Thus, since claims 1, 5, 9 and 11 are not (and were not) readable, either expressly or inherently, on Armand's disclosure, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection under 35 U.S.C. § 102(b), **or else to explain to Applicant exactly how the Examiner finds these claims to be readable, either expressly or inherently, on Armand's disclosure (in view of Applicant's above analysis showing that all limitations of these claims are not found, either expressly or inherently, in Armand's disclosure).**

Similarly, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection under 35 U.S.C. § 103(a), as Armand clearly does not teach, or even suggest, at least the "peripheral surface" limitation (as explained above), whereby it would have been impossible for a person of ordinary skill in the art to have considered it obvious to place the releasing knob on the peripheral surface, whereas Armand's releasing knob 21 is **only on the head end** of the control lever, and whereas there is absolutely no suggestion that it be placed anywhere else; in

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fact, Armand's (conventional) teaching is at exact cross-purposes with Applicant's location of a releasing knob on a peripheral surface of the grip portion of the control lever.

Furthermore, Applicant respectfully submits that the Examiner's proposal

to modify the apparatus of Armand to place the release knob on a peripheral surface for the purpose of ergonomic placement for the driver,

is, at best, **conclusory** and, at worse, confusing. In any event, Applicant respectfully submits that the Examiner has not made out a *prima facie* case of obviousness, as, not only is there no suggestion in Armand to place the releasing knob on a "peripheral surface" of the control lever, but Armand teaches only the conventional location of the releasing knob at the head end of the control lever, and it is clear that, from the construction illustrated in Armand, the releasing knob 21 could **not be moved** to a peripheral surface of the control lever 10.

Again, if the Examiner does not withdraw this rejection under 35 U.S.C. § 103(a), the Examiner is respectfully requested to explain why, in view of the above-noted deficiencies of Armand with respect to claims 2, 6 and 10-12, the Examiner can justify concluding that the subject matter of each of these claims would have been obvious, at the time the claimed invention was made, and without the benefit of the prohibited use of hindsight knowledge gained from a reading of Applicant's own disclosure.

Strangely, after rejecting claims 2, 6 and 10-12 under 35 U.S.C. § 103 as being unpatentable over Armand **alone**, the Examiner in paragraph 7 on page 4 of the Office Action, then rejects these same claims 2, 6 and 10-12 under 35 U.S.C. § 103(a) as being unpatentable

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(obvious) over Armand in view of Decrouppe '789. Again, the Examiner makes the (contradictory) statement that Armand does not disclose

the releasing knob being disposed on a peripheral surface of a grip of the control lever. . .

As previously explained to the Examiner, Decrouppe is from the non-analogous art of a "selector system for manually shiftable automatic transmissions". However, even assuming, *arguendo*, the accuracy of the Examiner's broad statement, "Decrouppe et al shows a releasing knob being disposed on a peripheral surface of a grip of a control lever", the structure and operation of a shiftable transmission lever are **so greatly different** from Applicant's claimed subject matter that, Applicant respectfully submits, it is untenable to suggest that a bald showing of the placing of a "releasing knob" on a peripheral surface of a transmission selector lever, or of any control lever in a vehicle or automobile, would have (or could have) rendered obvious the subject matter of Applicant's claims 2, 6 and 10-12.

Furthermore, the Examiner again makes a **conclusory** statement in support of this rejection:

. . . obvious . . . to modify . . . to place the release knob on a peripheral surface for the **purpose of ergonomic placement of the driver** (?). (Emphasis added)

Again, Applicant respectfully submits that such a conclusory statement does not satisfy the requirement for making a *prima facie* case of obviousness of the subject matter of each of claims 2, 6 and 10-12, and that the Examiner relies only on Applicant's own disclosure even to assert this conclusion.

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Furthermore, Applicant respectfully submits that the Examiner's statement that Decrouppe is not from a non-analogous art because both Decrouppe and Applicant's claimed invention are from the very broad "automotive art" is insufficient, *per se*, to support a conclusion that the invention and the reference are not from non-analogous arts.

For similar reasons, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection of dependent claims 3, 4, 7, 8 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Armand in view of Decrouppe and further in view of Labret '041.

First, Applicant has already explained why the independent parent claims 1 and 2 are neither anticipated by, nor would have been obvious from, Armand alone or in combination with Decrouppe.

As with the other rejections, Applicant respectfully reminds the Examiner that it is the subject matter, **taken as a whole**, of each of these dependent claims which must be tested for obviousness against the prior art represented by these three references.

In view of the above-described deficiency of the proposed Armand/Decrouppe combination, Applicant respectfully submits that (again) it is untenable to suggest that Labret's structure of a **non-analogous** "outside door handle assembly for a motor vehicle" would be relevant to Applicant's claimed "control lever system for a parking brake". Thus, Applicant (again) respectfully requests the Examiner also to reconsider and withdraw this rejection of the dependent claims 3, 4, 7, 8 and 11.

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With regard to the Examiner's "Response to Arguments", Applicant has already answered the Examiner's response as presented in paragraph 9 on page 6 of the Office Action. In particular, see Applicant's above comments regarding the Examiner's statement, "as broadly claimed", with respect to the location of the releasing knob on "a peripheral surface" of the control lever, and to the console's having "an open lateral face at a lateral side thereof".

With respect to paragraph 10, Applicant agrees with the Examiner's broad, but out of context, statement of the law. However, Applicant respectfully submits that the "automotive art" is far too broad a field of endeavor to justify (at least without the prohibited use of hindsight) the combination, of Armand's brake control lever with a non-analogous transmission selector control lever (Decrouppe) and with a non-analogous vehicle door assembly (Labret), in an attempt to reconstruct Applicant's claimed subject matter.

Applicant also agrees with the Examiner's broad statement of the law regarding hindsight reasoning employed by the Examiner; however, the Examiner's statement is again very broad and taken out of context as Armand's (conventional) location of the releasing knob on the head end of the brake control lever) clearly shows that it is only by a hindsight reasoning and reconstruction based on the knowledge of Applicant's own disclosure that the Examiner could have suggested moving Armand's releasing knob 21 to a peripheral surface of the control lever (claim 1) and also to face downwardly in the recess (claim 2).

Furthermore, Applicant's claimed structure is **not** merely an **obvious** rearrangement of parts shown in the prior art, as moving Armand's releasing knob 21 from the head end of the

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control lever 10 to a peripheral surface thereof clearly would require (an almost impossible) reconstruction of the structure actually disclosed and illustrated by Armand. **Applicant's claimed** novel, unobvious and critical arrangement of parts produces the advantages and unexpected results as set forth in Applicant's specification at least at page 2, last two paragraphs, and page 11, second full paragraph.

In summary, then, Applicant respectfully requests the Examiner to reconsider and withdraw all the rejections under 35 U.S.C. § 112, second paragraph, 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a), and to find the application to be in condition for allowance with all of claims 1-12.

REQUEST FOR INTERVIEW

However, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to **call the undersigned attorney** to discuss any unresolved issues and to expedite the disposition of the application.

In this regard, (if the application is not now in condition for allowance) Applicant respectfully requests the opportunity to have Applicant's attorney discuss with the Examiner the Examiner's qualifier, "as broadly claimed", particularly since this qualifier may suggest that there is patentable subject matter in Applicant's disclosure but that in the Examiner's opinion, the language of the claims is too broad to overcome the Examiner's rejections on the prior art.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to

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Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,


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